

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware)	
corporation,)	
)	
Plaintiff,)	
)	Case No.
vs.)	2:17-cv-01731-TSZ
)	
JOHN DOE, subscriber assigned IP)	
address 73.225.38.130,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION OF [REDACTED]

April 9, 2019

10:01 a.m.

Seattle, Washington

Reported by:
Mark Hovila, CCR, CM
CCR No. 2599
Job No. 790669

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1 Q. Who?

2 A. I do not know his name, but an attorney in

3 Spokane.

4 Q. Okay. And was that one of the attorneys

5 you'd reached out to --

6 A. Yes.

7 Q. -- see about working on this?

8 A. Yes.

9 Q. Okay. And who referred you to the Terrell

10 Marshall firm?

11 A. The Terrell --

12 Q. This is her firm.

13 MS. McENTEE: I'm going to object and

14 instruct the witness not to answer, because it's

15 invading the attorney-client privilege.

16 BY MR. BANDLOW:

17 Q. Did you pay Mr. Edmondson up front to

18 represent you in this case?

19 A. No.

20 MS. McENTEE: Objection. Instruct the

21 client not to answer. You don't get to ask these

22 questions about --

23 MR. BANDLOW: Are you sure? Compensation to

24 an attorney you don't get to ask? Do you want to give

25 me a case on that?

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1 MS. McENTEE: You want to give me a case on

2 the other side?

3 MR. BANDLOW: Absolutely you get to ask

4 about financial arrangements between the attorney.

5 I've asked it about 100 times in cases. You're going

6 to instruct him not to answer that?

7 MS. McENTEE: Why don't you let us take a

8 break.

9 THE VIDEOGRAPHER: We're going off the

10 record.

11 (Recess)

12 THE VIDEOGRAPHER: We are back on the

13 record.

14 MR. BANDLOW: Did you want to say something

15 about the last objection?

16 MS. McENTEE: No. I thought that you were

17 intending to just go forward with the questioning and

18 allow any objections to be on the record.

19 BY MR. BANDLOW:

20 Q. Okay. How much did you pay Mr. Edmondson to

21 retain him to take this case?

22 MS. McENTEE: Objection and instruction not

23 to answer.

24 BY MR. BANDLOW:

25 Q. Are you going to follow your lawyer's advice

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1 and not answer that question?

2 A. Yes.

3 Q. Okay. How much did have you paid to date in

4 legal fees to defend this case?

5 MS. McENTEE: Same objection. And I just

6 want to add to that that we are not interested in

7 having a waiver of the attorney-client privilege here.

8 I think this is an issue that we need to take up with

9 the court, because obviously you're entitled to

10 explore damages in this case for abuse of process.

11 But I think we need to figure out a mechanism for that

12 to happen that doesn't involve my client waiving his

13 attorney-client privilege, which is why I suggested

14 that we try to talk about this off the record before

15 we resume questioning.

16 MR. BANDLOW: Well, okay, we can go off the

17 record if you want to in a minute. I don't ever have

18 any intention of asking him anything he's discussed

19 with his attorneys, conversations about how to handle

20 the case, anything of that nature. I'm interested in

21 simply how much he's paid and who's paying the legal

22 fees in this case. Period. It will end at that. I'm

23 not going to go into anything else attorney-client

24 privilege. If you think by his answering that

25 question that somehow waives privilege, I don't agree

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1 that it does, because I don't think it's privileged

2 information, but it's certainly clear for the record I

3 don't ever care about any conversations or

4 interactions he's had with his counsel. I'm asking

5 solely about financial aspects of this case.

6 MS. McENTEE: Certainly if the question is

7 have you paid anything, how much have you paid, are

8 you obligated to pay, and are you obligated for costs,

9 I think those are appropriate questions.

10 MR. BANDLOW: Okay. I'd love the answer to

11 all of those. They were great. I might even have the

12 reporter read them back they, were so good.

13 BY MR. BANDLOW:

14 Q. Are you obligated to pay costs in this

15 lawsuit?

16 A. Yes, I am.

17 Q. Okay. And have you to date paid costs?

18 A. No.

19 Q. Have you paid anything in attorney's fees to

20 date on this matter?

21 A. No.

22 Q. Do you know who has -- do you know if anyone

23 has paid your attorneys for their services for this

24 case?

25 A. No. No.

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[illegible]

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1 Q. Okay. And you filed a declaration early in
2 this case essentially saying you'd never heard of us,
3 you'd never downloaded anything, et cetera, right?
4 A. Yes.
5 Q. Were you made aware at the beginning of this
6 lawsuit that if Strike 3 could verify the contents of
7 that declaration it would dismiss the lawsuit?
8 A. I'm assuming that the letter may have -- I
9 don't know how, you know -- that they may have what?
10 Q. Dismissed the lawsuit if they could just
11 confirm the contents of your declaration.
12 A. I don't know how -- I'd have to read the
13 letter to put it, you know.
14 Q. And as of the date when you filed the
15 declaration, it was signed John Doe --
16 A. Yes.
17 Q. -- and we had no idea who you were, correct?
18 A. Yes.
19 Q. And do you have any idea how long it took
20 for Strike 3 to be actually made aware of your name
21 and address after filing the lawsuit?
22 MS. MCENTEE: I've allowed some leeway here,
23 but I'm objecting because you're getting into an
24 attorney-client privileged area and it's improper. So
25 I think you should move on.

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1 BY MR. BANDLOW:
2 Q. You knew the judge had ordered that Comcast
3 had to provide that information to the judge and not
4 to us, right?
5 MS. MCENTEE: Objection, foundation.
6 BY MR. BANDLOW:
7 Q. You can answer. She's making objections for
8 the record.
9 A. Oh. Can you ask it again?
10 Q. You had been made aware early on that if the
11 judge had entered an order that Comcast was not to
12 give your name and address to Strike 3 but was simply
13 to give it to the court?
14 MS. MCENTEE: Don't answer that question.
15 Another objection. You're infringing on the
16 attorney-client privilege. Now, if you have some
17 other sort of evidence you want to provide to this
18 witness that does not infringe on that privilege, by
19 all means.
20 BY MR. BANDLOW:
21 Q. Exhibit 2. Your letter to Comcast. You
22 wrote: "In part, the 'MINUTE ORDER' provides that:
23 As of 1/25/2018, if the ISP has not already provided
24 responsive material to the plaintiff or its counsel,
25 the ISP shall not disclose any such responsive

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1 material to plaintiff or its counsel, but instead
2 shall send the responsive material, in an envelope
3 promptly marked 'CONFIDENTIAL SUBSCRIBER INFORMATION,
4 TO BE FILED UNDER SEAL,' addressed to the Clerk." You
5 knew --
6 A. Yes.
7 Q. -- as of February 2nd, 2018, that the
8 information was not going to come to Strike 3, it was
9 going to go to the court alone, correct?
10 A. Yes. That --
11 Q. And when did you find out your ultimate
12 information as to who you were and what your address
13 had been provided to Strike 3?
14 A. When did I find out?
15 Q. Yeah.
16 MS. MCENTEE: Again, objection and
17 instruction not to answer. You are infringing on the
18 attorney-client privilege.
19 BY MR. BANDLOW:
20 Q. Are you going to follow that instruction?
21 A. Yeah.
22 Q. Okay. You were in law enforcement for a
23 number of years, correct?
24 A. Yes.
25 Q. Multiple people in your course of dealing in

<p style="text-align: right;">Page 262</p> <p>1 point of DMCA.</p> <p>2 A. Okay.</p> <p>3 MS. McENTEE: Counsel, are you going to ask</p> <p>4 questions?</p> <p>5 BY MR. BANDLOW:</p> <p>6 Q. Did you know that?</p> <p>7 A. No.</p> <p>8 MS. McENTEE: You keep asking this witness,</p> <p>9 a lay witness, questions that are more appropriately</p> <p>10 directed to experts. If you want to keep --</p> <p>11 MR. BANDLOW: No --</p> <p>12 MS. McENTEE: -- going down that path we</p> <p>13 can, but --</p> <p>14 MR. BANDLOW: No. No. I'm asking about his</p> <p>15 allegations.</p> <p>16 MS. McENTEE: Okay. Go ahead.</p> <p>17 MR. BANDLOW: Period. Period. I'm reading</p> <p>18 specifically from his allegations.</p> <p>19 BY MR. BANDLOW:</p> <p>20 Q. What was your good faith basis for your</p> <p>21 assertion that Strike 3 has no intention of litigating</p> <p>22 its cases?</p> <p>23 A. Again, it's just based on what I have, you</p> <p>24 know, read that they're more interested in or</p> <p>25 interested in settling without going to court. I</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. Do you know who Malibu Media is?</p> <p>2 A. I've heard of that, yes, in that research.</p> <p>3 Q. Okay. So you saw some of the information of</p> <p>4 other plaintiffs. Did you put that into the mix of</p> <p>5 what you made as the basis for your allegations</p> <p>6 against Strike 3?</p> <p>7 A. I would -- yeah.</p> <p>8 Q. What other people have done?</p> <p>9 A. What other people and what I observed from</p> <p>10 Strike 3.</p> <p>11 Q. Okay. What did you observe from Strike 3 by</p> <p>12 the time you filed the counterclaim?</p> <p>13 A. Well, on the cases, I'm saying.</p> <p>14 Q. Did you do a PACER search?</p> <p>15 A. I don't have PACER, no.</p> <p>16 Q. You know what PACER is though, right?</p> <p>17 A. Yeah. I thought about, you know --</p> <p>18 Q. You could track federal pleadings, couldn't</p> <p>19 you, with PACER, right?</p> <p>20 A. With?</p> <p>21 Q. With PACER you could track federal</p> <p>22 pleadings.</p> <p>23 A. Well, I don't know that much about it. I</p> <p>24 just know they have access to -- you can get access to</p> <p>25 court decisions and things.</p>
<p style="text-align: right;">Page 263</p> <p>1 don't -- you know. I've read that numerous times</p> <p>2 and --</p> <p>3 Q. Did you do any research of the lawsuits</p> <p>4 filed by Strike 3 around the country to see if they'd</p> <p>5 actually litigated any of them?</p> <p>6 A. Well, the only ones that I'd done, you know,</p> <p>7 I can't say the only ones. Ones that I had researched</p> <p>8 or printed out in many cases involved numerous filings</p> <p>9 on one filing for numerous IP addresses, and that in</p> <p>10 the end, the only one that was -- that the filing was</p> <p>11 -- everything was thrown out except for the primary.</p> <p>12 Q. Are you talking about cases where there were</p> <p>13 multiple defendants joined in one lawsuit?</p> <p>14 A. Yes.</p> <p>15 Q. Did you read those? You know that's not</p> <p>16 this case, right? This is a --</p> <p>17 A. Yes, I do know that. I'm basing -- I'm</p> <p>18 basing what you're asking me about on what I had read</p> <p>19 and what I had, you know, the things that I had read.</p> <p>20 Q. Does that include things that other</p> <p>21 plaintiffs besides Strike 3 have done in these kind of</p> <p>22 cases? Did that information go into your good faith</p> <p>23 basis for making these allegations? Do you know who</p> <p>24 Prenda is?</p> <p>25 A. No, I don't know who Prenda is.</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. What do you want out of the counterclaim?</p> <p>2 What do you want?</p> <p>3 A. What do I want?</p> <p>4 Q. Yeah. You've got a counterclaim. What do</p> <p>5 you want?</p> <p>6 A. I want attorney fees covered.</p> <p>7 Q. In case they go after you for attorney's</p> <p>8 fees, because you haven't paid them yet, right?</p> <p>9 A. Huh?</p> <p>10 Q. You haven't had to pay them yet?</p> <p>11 A. I don't want to have to pay anybody for</p> <p>12 attorney fees that I'm wrongly accused of.</p> <p>13 Q. Do you have a deal with your attorneys that</p> <p>14 allowed them to go seek attorney's fees from Strike 3</p> <p>15 so that you don't ever have to pay them?</p> <p>16 MS. McENTEE: Objection and instruction not</p> <p>17 to answer. You do not get to ask that question.</p> <p>18 MR. BANDLOW: Oh. Questions about retainer</p> <p>19 agreements and how they work aren't proper?</p> <p>20 MS. McENTEE: I asked you earlier,</p> <p>21 counsel --</p> <p>22 MR. BANDLOW: I'll just make a note for the</p> <p>23 end of this week.</p> <p>24 MS. McENTEE: No, no, no. I asked you</p> <p>25 earlier to provide me some case law on that issue and</p>

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1 you did not.

2 MR. BANDLOW: Because you withdrew your

3 objection. Now you're making it again.

4 MS. McENTEE: No. I went through objection

5 as to --

6 MR. BANDLOW: You let him answer all of

7 them.

8 MS. McENTEE: Counsel, please don't

9 interrupt.

10 MR. BANDLOW: You let him answer all of

11 them. That's why I didn't --

12 MS. McENTEE: I gave leeway to ask questions

13 that are proper. But you don't get to get into the

14 details of a retainer agreement. And if you have

15 authority, right, which suggests otherwise, please

16 share it with me and I am happy to consider it. But

17 without that I'm not going to waive my client's

18 attorney-client privilege.

19 BY MR. BANDLOW:

20 Q. So you want the attorney's fees. Right?

21 A. Absolutely.

22 Q. Okay.

23 A. I don't believe I am responsible -- there

24 would not have been any attorney fees had the lawsuit

25 been brought on me. Wrongly brought on me.

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1 Q. If you -- it's your understanding that

2 ultimately your attorneys are going to seek to have

3 you pay their attorney's fees?

4 A. That would be -- yes.

5 Q. Okay. Anything else you want?

6 A. That's -- that's the main thing. I would

7 really like to see some practices changed.

8 Q. What would you like to see changed?

9 A. Notices, you know, letting people know that

10 they're doing, you know, doing something wrong and --

11 Q. A DMCA notice tells an ISP that one of their

12 subscribers is infringing copyrighted works. Do you

13 understand that?

14 A. Yeah.

15 Q. Okay. So in other words, even a DMCA notice

16 that goes out to an ISP, it's informing that ISP of

17 infringements that have already happened.

18 A. Okay.

19 Q. Do you want those infringements that have

20 already happened to never be -- a person will never be

21 held responsible for them?

22 A. In some cases, yeah. If the person is not

23 knowingly downloading something that is infringement.

24 Not everything that people download are, you know, say

25 this is infringing on somebody's right. If they do it

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1 without knowing about it and are not notified, how are

2 to know that it's not -- you're not -- it's not

3 copyrighted material?

4 Q. If you assume someone knowingly --

5 A. If I assume --

6 Q. Hold on. If you assume someone knowingly

7 went onto BitTorrent to acquire movies that they had

8 not paid for so they could watch them, and a DMCA

9 notice goes out, would you at least agree that those

10 prior infringements of those works should be

11 compensated?

12 A. Not necessarily. You know, like I say, if

13 you're doing something not knowing that you're doing

14 something wrong, you know. When you are informed that

15 you're doing something wrong and you continue to do

16 it, yes, I can see that compensation should be made in

17 that case, you know. If somebody is doing something

18 that, you know, downloading something that they

19 shouldn't and are not aware of it, then, you know,

20 it's -- they have to knowingly, at least in criminal,

21 I don't know about this kind of law, but I know in a

22 criminal prosecution you have to knowingly know that

23 you're doing something wrong before --

24 Q. Well, do you know that copyright law has no

25 state of mind requirement? If you do it you're in

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1 trouble, that's it?

2 A. No, I don't know that.

3 Q. Okay. And if you were a police officer if

4 you had suspicion that someone had done something --

5 A. Yeah.

6 Q. -- but you're not actually convinced, you'd

7 want to gather more evidence, right?

8 MS. McENTEE: Counsel, again, objection.

9 This calls for speculation, has nothing to do with the

10 claims or defenses in this case, and we're going down

11 a path now that is highly argumentative and improper.

12 BY MR. BANDLOW:

13 Q. If Strike 3 had information that led it to

14 believe that the ISP address that your ISP has

15 identified was downloading its content, would you

16 think there was anything improper with Strike 3 trying

17 to find out more information to confirm that?

18 MS. McENTEE: Objection, calls for a legal

19 conclusion.

20 BY MR. BANDLOW:

21 Q. You can answer.

22 A. I'm going to --

23 Q. She didn't instruct you not to answer. She

24 made an objection for the record.

25 A. Oh, okay.